

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

June 7, 2004

CALL TO PODIUM:

Trudy Schwarz

RESPONSIBLE STAFF:

Cathy Borten, City Attorney
Trudy Schwarz, Community
Planning Director

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Joint Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
x	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	NA
Advertised	04/28/2004
	05/05/2004
Hearing Date	05/17/2004
Record Held Open	06/03/2004
Policy Discussion	

TITLE:**POLICY DISCUSSION**

T-364 - An ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article V, entitled, "Site Development Plans," §24-173 entitled, "Development of Property Subject to Plan," to allow additional extension of site development plans where such plans are the subject of appeal and to create subsections within §24-173.

SUPPORTING BACKGROUND:

The joint public hearing for this text amendment was held on May 17, 2004 and the record was held open for 17 days (June 3, 2004.) There were no speakers at the public hearing. Additions to the record include the transcript, an e-mail from Mark Hackman and the recommendation of approval by the Planning Commission.

Currently, Section 24-173 of the Zoning Ordinance, Chapter 24 of the City Code, allows for approval of a site plan for 365 days with the ability to request two extensions; thereby allowing a site plan to be valid for a period of three years. Once the site plan approval expires, the property owner is required to re-apply for the final site plan approval process.

If a site plan expires while undergoing administrative appeals through the City, Montgomery County, or the State of Maryland, the property owner no longer has a valid site plan. Most property owners do not proceed with the development during the pendency of the appeals in order to avoid the risk of commencing construction only to receive an adverse decision regarding the development. In addition, if the site plan approval expires, the property has to begin the entire review process again which also allows another administrative appeal period.

The proposed text amendment would allow site plans that are the subject of an administrative appeal the opportunity to be granted two additional one-year extensions.

Attachments: Text Amendment, Index of Memoranda and new Exhibits marked in bold. The Planning Commission's recommendation is on CPC paper.

DESIRED OUTCOME:

Adopt ordinance.

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE
(CITY ZONING ORDINANCE), ARTICLE V, ENTITLED,
"SITE DEVELOPMENT PLANS," §24-173 ENTITLED,
"DEVELOPMENT OF PROPERTY SUBJECT TO PLAN,"
TO ALLOW ADDITIONAL EXTENSION OF SITE DEVELOPMENT PLANS
WHERE SUCH PLANS ARE THE SUBJECT OF APPEAL
AND TO CREATE SUBSECTIONS WITHIN §24-173

T-364

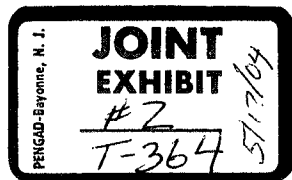
BE IT ORDAINED, by the Mayor and Council of the City of Gaithersburg in public meeting assembled, that Chapter 24, §24-173 of Article V of the City Code is hereby amended to read as follows:

ARTICLE V. SITE DEVELOPMENT PLANS

* * *

Sec. 24-173. Development of property subject to plan.

- (a) One or more of the uses proposed for land which is the subject of the site development plan shall be established on such land within three hundred sixty-five (365) days after the date of approval of the plan or the plan shall become void; provided, that the planning Commission may extend such time upon request filed within such three hundred sixty-five (365) days and may grant further extensions upon request filed within the period of any extension; provided, that the total length of such extensions shall not exceed two (2) years. [Where the site development plan contemplates the construction of one or more new buildings or structures, the use shall be established within the meaning of this section when construction of one or more of such buildings has been commenced.]
- (b) Where an approved site development plan is the subject of an administrative appeal pursuant to §24-242, or where a site development plan is approved pursuant to a schematic development plan and that schematic development plan is the subject of an administrative appeal pursuant to §24-242, the planning commission may grant further extensions of the site development plan upon request filed during the pendency of such administrative appeal and within the period of any extension; provided, that the total length of all such additional extensions shall not exceed two (2) years. The additional extensions allowed by this subsection (b) shall apply to all timely filed requests for extensions filed by May 1, 2004.



- (c) Where the site development plan contemplates the construction of one or more new buildings or structures, the use shall be established within the meaning of this section when construction of one or more of such buildings has been commenced.

ADOPTED this ____ day of _____, 2004, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ____ day of _____, 2004. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this ____ day of _____, 2004.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ____ day of _____, 2004, and the same was approved by the Mayor of the City of Gaithersburg on the ____ day of _____, 2004. This Ordinance will become effective on the ____ day of _____, 2004.

DAVID B. HUMPTON, City Manager

TRANSCRIPT OF
JOINT PUBLIC HEARING

ON

T-364

An Ordinance to Amend Chapter 24 of the City Code
(City Zoning Ordinance), Article V, Entitled, "Site
Development Plans," §24-173 Entitled, "Development
of Property Subject to Plan," so as to Allow Additional
Extension of Site Development Plans Where Such Plans
are the Subject of an Administrative Appeal and
to Create Subsections Within §24-173

BEFORE THE
CITY OF GAITHERSBURG
MAYOR AND CITY COUNCIL

AND
PLANNING COMMISSION

ON

May 17, 2004

Transcribed by
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Somerset
Council Member Alster
Council Member Edens
Council Member Marraffa

Absent: Council Member Schlichting

PLANNING COMMISSION

Chair Keller
Vice Chair Bauer
Commissioner Levy

Absent: Commissioners Hicks and Winborne

CITY ATTORNEY

Cathy G. Borten

CITY MANAGER

David B. Humpton

STAFF

Community Planning Director Schwarz

NO SPEAKERS FROM THE PUBLIC

Katz The next item on our agenda is a joint public hearing. Tonight we have one joint public hearing and I guess Trudy Schwarz is going to introduce it, please.

Schwarz Good evening. This is a public hearing on Text Amendment T-364, which is a request to amend §24-173 of the Zoning Ordinance, Chapter 24 of the City Code. The hearing was duly advertised on April 28 and May 5, 2004 in the *Gaithersburg Gazette*. At the present time, there are six (6) exhibits in the record file. They are referenced in an exhibit list in the file. The individual exhibits may be reviewed during the course of the meeting or in the Planning and Code Administration Office during regular business hours at City Hall. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received in evidence. This text amendment proposes to allow the Planning Commission to extend the approval of a site plan for two additional years, if it has been the subject of an administrative appeal, which usually lasts longer than the three year period of the existing site plan approval that is allowed by the Code at this time.

Katz Ok. Any questions of Trudy? Thank you very much.

Levy I wanted to ask the City Attorney, if that is appropriate. Cathy, I was just wondering if there is some way to tie this more directly into the length of the delay that actually occurs because of the appeals process. Instead of putting years on it, where years may not be as applicable.

Borten Well I think there was some concern about having these plans be out there indefinitely. And generally, what would happen is an appeal, it seems like almost every appeal takes a year. You're one body and that it takes a year until you actually either get to the next level or your get your decision. So that could continue on and on. And essentially what you have right now is with the original year, then two extensions allowed, now

two more, that's five years. So that's already a long period of time. And then there was some concern about having it go any longer that. Certainly if the appeal is decided earlier than five years, then you will be done within that time frame, but I guess that would be the pleasure of the Planning Commission and the Council to decide if in fact you wanted to actually allow for more time than five years.

Katz We have never run into a problem where we needed more time. Obviously, we run into a problem where we do need an additional time from what we have today.

Borten The current three years, it easily can be, run pass that. That's pretty easy to do even if you are talking about just the Circuit Court and perhaps the Court of Special Appeals. So if you are looking at then going on to the Court of Appeals or if you have a situation where you have reconsiderations. Before you get to the next level, as we experienced, it just easily can go past the three years. But the cut off at five was really; we looked at various extensions and there was a concern that it might get to be a little bit to (inaudible). You got this plan and you to make sure that by the time you actually get around to implementing the plan, that everything is really still valid.

Somerset But it can be less as I understand it?

Borten Absolutely. The way that it reads, you also don't need to actually apply for those two full extra years. If you have gone through the first year and you've applied for an extension for a year, you've applied for another year and then your appeal is taking longer, you can apply for that fourth year and if you don't need the fifth year you don't apply for it. As long as your appeal is pending and you apply for the extension during the validity of a current extension period.

Levy And when we say administrative appeal, you're saying that includes going to the Circuit Court and on from there.

Borten That is correct.

Somerset But the length of any extension is at the discretion of the Planning Commission, it's not in increments of years? Is that right?

Borten I believe that when you apply for an extension, it is a one year extension.

Somerset The Planning Commission may get further extensions so long as the total length does not exceed two years.

Borten They are done in one year increments. The plan is good for 365 days and then if you want to have an extension for a year, you can get that first year. I think you can, and Trudy may be able to answer this more accurately, but I think when you apply for the two years right off, it has to be individually each year.

Katz That's correct.

Somerset I guess that is the confusing part for me, because you are saying here administrative appeal, if someone goes before the Board of Appeals, that may take them a week or month.

Borten Probably several months.

Somerset But then (inaudible) Circuit Court, their not all court.

Borten No they are not all court, then in which case if had your 365 days and there was an appeal to the Board of Appeals, requested a one year extension and it never went anywhere after that, you wouldn't need to ask

for anymore extensions. Which is again why we haven't said, you automatically get this much time?

Somerset Well I guess I'm thinking that it sounds like the Planning Commission could grant a three month extension or a six month extension, its always a year. It may not need to be, why drag it out.

Borten It is my understanding that each extension is a year, but if it is not needed, I don't think it would be used. I think once the appeal process is done.....

Alster It's not automatic; it has to be approved by the Planning Commission.

Edens But it is not just the pending of the appeal process, it's the site plan approval that they then have to go back and get their permits. There is more time; it takes time to actually get to the construction process. So what it is trying to account for is with the normal period is what, 365 days, and that is in place because there is a recognition that after you get the approval, there is all these other things you got to go through before you ever break ground. And then there is weather and there are seasons and there is everything else. And what this is just trying to do is account for any delay built in by the administrative appeal process so as to not penalize somewhat who in good faith has brought forward a valid site plan that we approved. But at the same time, I think the year to year intervals gives the Planning Commission good control over whether or not they want to continue this. And if there are changes to circumstances, then maybe they don't.

Borten And that time is essential because basically the process stops. And that is why we are building it in. People are not going to continue to build at the risk of being told, now you have stop.

Katz And it's at no fault of the person who has gotten the original.

Somerset I have no problem extending it; I'm just noting that the wording does not say anything about a minimum of a year every time an extension is granted. So maybe there is no need to, depending on the kind of appeal that is pending to drag it on and on and on.

Levy But it says, upon request filed and request filed is for 365 day extension as I understand it.

Katz I don't know why someone would ask for an extension of only three months when they might have weather problems or whatever.

Levy And when we allow it, they ask for a year.

Katz That doesn't mean that they have to take that whole year. It just means it gives them a chance.

Levy Cathy is this saying that they can come in ask for it even if they don't need it. Instead of saying they can ask for a year, the appeal has delayed it for a year and then they can ask for another year.

Borten No. Let me back up. You have your 365 days for whatever reason. And I don't believe that this really puts any limits on that. We recognize the process could take long for a variety of reasons. You can come in and get the two years additional so you have three years. But if you are (inaudible) administrative appeals and we have it here, then you would have to make the request during the pending of an appeal. If you are in an appeal process, you know it can take a significant amount of time. It is not going to take three months. It could take; the Court of Special Appeals is taking a very, very long time making their decisions right now. So, it's not that you wouldn't think you need it. I don't think it is perceived as being intended to just say; hey listen if you need a little extra time. It's

really, if you are in the appeal process, you know that you are looking at from when that appeal is filed, you're probably looking at another year and then as Council Member Edens said, even once its over, now you have to go through all that process again of getting the construction started which takes a long time. Did I answer your question?

Levy Yes you did, because when you said it can only be filed during the pendency of the appeal, that answers my question.

Borten And if you don't have an appeal pending, you don't get those additional two years. That's why we have actually, you'll notice that from the original text, we have now added subsections to make it very clear that this is what you get in the situation and this is what you get in this situation.

Katz Ok. Any other questions? Thank you. Is there anyone in the public that would like to speak on this public hearing topic? No? It has been suggested that the Planning Commission hold their record open for ten (10) days which would close on May 27, 2004, and that the City Council record would be open for seventeen (17) days, close June 3, 2004. What is the pleasure of the Planning Commission please?

Keller Do I have a motion to hold our record open for ten (10) days?

Bauer Madam Chair, I move that we, the Planning Commission hold their record open for ten (10) days to close on May 27, 2004.

Levy Second.

Keller All in favor?

Commission Ayes.

Keller Motion passes 3-0.

Katz Ok. It has been suggested that the Council hold its record open for seventeen (17) days to close on June 3, 2004.

Alster Move that the Mayor and Council hold the record on T-364 open for seventeen (17) days to close on June 3, 2004.

Marraffa Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? Carries unanimously (4-0). We thank the Planning Commission very much for being with us. As always they are welcome to stay and as always we know they won't.

END OF JOINT PUBLIC HEARING
T-364

Distribution M&C: 6/1/04

From: Mary Beth Smith
To: mhackman@erols.com
Date: 05/27/2004 8:59:26 AM
Subject: Re: Comments to Text amendment T-364

Your email has been received and forwarded to city officials.

Mary Beth Smith
Public Information Director
City of Gaithersburg, MD

msmith@gaitthersburgmd.gov

www.gaithersburgmd.gov

>>> "Mark Hackman" <mhackman@erols.com> 05/27/04 3:10 AM >>>

Dear Mayor and City Council:

I am sorry that I have not been able to attend the last Mayor and City Council meeting where this text amendment was discussed during Public Hearing.

I will be on travel on June 2 when the Planning Commission will discuss this issue, so I thought it would be best to send you this e-mail.

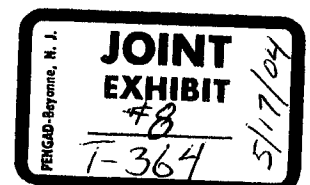
I have read the background material posted on the City of Gaithersburg's web site for this text amendment and I must take this opportunity to strongly oppose the passage/adopting of T-364.

While the City of Gaithersburg claims that the property development process in the City is transparent and open to public comment throughout the process. I also know that there are may closed sessions where the Mayor and City Council invite landowners and potential land developers to meet with you to discuss potential development within the City via the annexation process and the Citizens of Gaithersburg don't have any say in the matter.

The current Planning and Code for development in the City is already tilted in favor of the developer from day one as the City seems to have a great desire to get to the 100% build out mark, and then start the redevelopment process in order to increase City revenue via building permits, business taxes, etc.

The current Planning and Code sections related to property development and the timeframes associated are adequate. The current process gives the citizens of Gaithersburg an opportunity to administratively challenge any decisions of the City Council and Planning Commission via the Board of Appeals process and continue to the judicial system if necessary to correct the disparity

While this process can be time consuming and costly to the citizens that challenge the decision made by the Mayor and City Council and Planning Commission, we all know that Land Developers have much deeper pockets than any community in the City and they can hire the most expensive litigious lawyers to fight their battles in at the Board of Appeals Hearing and any other Court proceedings that may result from an unfair or unlawful decision by the Planning Commission, Mayor and City Council and the City's Board of Appeals.



I do not believe that a land developer should be granted any extensions for site development plans for any reason beyond the current one year, plus a one year extension.

As you are well aware the Shady Grove Village III Homeowners Association (SGV III HOA) is currently in a legal battle with the City of Gaithersburg and the Washingtonian Developer LLC regarding the Washingtonian North property. During the Board of Appeals process on the subject development, SGV III HOA and Boston Properties actually reached a compromising agreement that would have ended this legal battle a long time ago, however Mr. Diamond who was the City Attorney representing the Planning Commission objected/rejected to the negotiated deal and forced my community to go down the path of litigation.

So if you approve this text amendment, there will be no negotiations between land developers and the citizens that will be directly impacted by said developments, because the developer will know that if the issue ends up being challenged in the judicial system, they have an automatic extension to their site plan and as I have previously stated the developers have a lot more money and lawyers than any community association to fight their legal battles.

If the Mayor and City Council approves this text amendment, you will send a clear message to the citizens of Gaithersburg that you are pro-development and that you really don't care about the health, safety, and welfare of the citizens that elect you to hold a public office position.

I strongly urge you not to pass this text amendment. I request that this e-mail be added to the public record on this issue.

Thank you for your attention to this matter.

Sincerely yours,

Mark Hackman
President
Shady Grove Village III HOA

Cc: David Brown, Esq.

CC: dstokes

COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

VIA: David Humpton, City Manager

FROM: Trudy M. W. Schwarz, Community Planning Director

DATE: June 3, 2004

SUBJECT: **T-364** --An ordinance to amend Chapter 24 of the City Code (City Zoning Ordinance), Article V, entitled, "Site Development Plans," §24-173 entitled, "Development of Property Subject to Plan," to allow additional extension of site development plans where such plans are the subject of appeal and to create subsections within §24-173.

At its regular meeting on June 2, 2004, the Planning Commission made the following motion:

Commissioner Bauer moved, seconded by Commissioner Winborne, to recommend **APPROVAL** of Text Amendment T-364 to the Mayor and City Council.

Vote: 4-0